Qatari conviction of arbitrators raises rule of law concerns

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Courting an eerily understated reaction from the legal community, three arbitrators, one an ICC dispute resolution services regional director, have been convicted in Qatar of participating in criminal activity to cause international harm to a sheikh connected with the Qatari Emir.

On 31 October 2018, the Lower Criminal Court in Doha, Qatar, issued a ruling in absentia against three international arbitrators who transferred a dispute from the Qatar International Centre for Conciliation and Arbitration (QICCA) to ad hoc proceedings seated in Tunisia, alleging that the arbitrators were guilty of “participation in the criminal agreement and cause damage to the victim [Sheikh] Khalid Nasser Abdullah [Al Misnad] and obtaining illegal benefits out of this association”, and thus abusing the power granted to them as public servants of QICCA.

While the International Bar Association could not provide CDR with comment, in a statement, ICC International Court of Arbitration president Alexis Mourre said: “The ICC International Court of Arbitration is extremely concerned about this unprecedented interference of a criminal court in international arbitration proceedings, leading to wrongly assimilate international arbitrators to public servants in a procedure that apparently failed to abide by the most fundamental principles of due process and resulted in unprecedented condemnations.”

With the Chartered Institute of Arbitrators having invested in Qatar earlier this year, and the ICC having expanded its own Qatari offering in 2016, Mourre said the ruling would be hugely detrimental to Qatar as an arbitration venue, and more generally for international arbitration in the entire region, adding that “it is only to be hoped that is will be promptly corrected in appeals”.

The threat of imprisonment for arbitrators in the Middle East is nothing new. In late 2016, an amendment to the United Arab Emirates Federal Penal Code looked set to impose criminal liability on arbitrators that were found to maintain requirements around integrity and impartiality when issuing an award; an action which led prominent arbitrators to reject or resign from instructions in the region. After much lobbying, the amendment was very recently repealed.

BACKGROUND

Chairing the arbitration that issued a the award against the sheikh, was Tunisia-based Sami Houerbi, who is director of ICC dispute resolution services for Eastern Mediterranean, Middle-East and Africa, who sat alongside Lebanese arbitrator Nathalie Najjar, appointed by construction company Société d’Entreprise et de Gestion (SEG), and Qatari court-appointed Samir El Annabi, who is a former member of the ICC court.

The construction-related dispute first saw the sheikh file an application against SEG with the QICCA, the tribunal then transferred the seat to Tunisia, alleging it to be a more neutral forum for the parties.

Following a request from the sheikh, the Qatari courts ordered the removal of Houerbi and Najjar appointing a new tribunal in Qatar which issued an award against SEG.

The Tunisian proceedings went ahead, with the tribunal issuing an award against the sheikh for more than QAR 93 million (around GBP 20 million). Qatar’s Court of Appeal set aside the Tunisian award, leading to Tunisia’s Court of Cassation to overturn the set aside decision.

In addition to being sentenced in absentia to three years imprisonment by the Lower Criminal Court in Doha, the three arbitrators are also being pursued in civil proceedings seeking USD 250 million in damages.

REACTION

In response, a small number of practitioners took to LinkedIn, either condemning the ruling or suggesting it was at the very least troubling. However, given the sensitive nature of the case, and that larger firms are likely to have existing cases or interests in Qatar, some posts were then removed.

Of those whose posts remain, Myriam Eid, a partner at Hajj & Kanaan Law Office in Beirut, who is also an ICC Young Arbitrators Forum representative, said: “Shocking Qatari criminal decision against three prominent arbitrators for having fixed Tunis as the seat and conducted the arbitration as ad hoc whilst the arbitration clause neither provided for a seat of arbitration nor for an arbitral institution… Please spread the word and support our colleagues as this decision would damage arbitration practice in the MENA!”

Amine Babacheikh, head of legal at shipping and logistics company, the D’Alessandro Group, commented: “This is outrageous! The ruling of the Qatari court is due to the fact that the plaintiff is a relative of the Al Thani family.” While Alexander McLin, executive director at the Swiss Arbitration Association, simply said the ruling was “extremely concerning”.